THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

Reportable/ **Not Reportable**
Case no: 990/2025

In the matter between:

ZECHA HOLDINGS (PTY) LTD	1st Applicant
MELISSA MARLENE JAPHTA	2nd Applicant
and	
ZECHA JV ROSSTECH XEROX (PTY) LTD	1st Respondent
SEPHIRI ERNEST MOSALA	2nd Respondent
CHARLES ALFRED ROSSOUW	3rd Respondent
ROSSBURG INDUSTRIAL ENTERPRISES (PTY) LTD t/a ROSSTECH XEROX	4th Respondent

FIRSTRAND BANK LTD t/a FNB BANK 5th Respondent

STANDARD BANK OF SOUTH AFRICA LTD t/a STANDARD BANK 6th Respondent

Neutral citation: *Zecha Holdings (Pty) Ltd and Another v Zecha JV Rosstech Xerox (Pty) Ltd and Others (Leave to Appeal)* (990/2025).

Coram: Tlaletsi JP.

Heard: 22 April 2026.

Delivered: 5 June 2026.

Summary: Application for leave to appeal – Section 17(1) of the Superior Courts Act 10 of 2013 – Whether the envisaged appeal has reasonable prospects of success – Whether there is some other compelling reason why the appeal should be heard – None established – Leave to appeal is refused.

ORDER

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1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

JUDGMENT: APPLICATION FOR LEAVE TO APPEAL.

Tlaletsi JP

[1] This matter concerns an application for leave to appeal to the Full Court of this Division, alternatively to the Supreme Court of Appeal, against the whole

judgment and order of this Court as handed down on 07 November 2025.[1] The applicants contend that there are prospects of success in the envisaged appeal, alternatively, that there are some other compelling reasons for the appeal to be heard. The impugned order confirmed a rule *nisi* issued on 17 April 2025 by Stanton J and is on the following terms:

> "1. The third respondent [FirstRand Bank Ltd t/a FNB Bank] is ordered to forthwith transfer the amount of R4,250 000,00 (Four Million Two Hundred and Fifty Thousand Rand), from the account held in its books by the First Respondent [Zecha Holdings (Pty) Ltd] under account number 6[...], into the account held by the First Applicant [Zecha JV Rosstech Xerox (Pty) Ltd] with the fourth respondent [Standard Bank of South Africa Ltd t/a Standard Bank] under account number 3[...]; and
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> 2. The first and second respondents are ordered to pay the costs of this application on party-and-party scale, jointly and severally with each other, the one paying the other to be absolved *pro tanto*."[2]

[2] The respondents do not participate in these proceedings. The factual matrix underlying the matter is fully set out in the impugned judgment. It is therefore unnecessary to burden this judgment with a repetition thereof.

[3] I first deal with the legal position governing applications for leave to appeal. Section 17(1)(*a*)-(*c*) of the Superior Courts Act 10 of 2013 ("the Act") provides that:

> "(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that -
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> (*a*) (i) the appeal would have a reasonable prospect of success; or

[1] See *Zecha JV Rosstech Xerox (Pty) Ltd and Others v Zecha Holdings (Pty) Ltd and Others* (990/2025) [2025] ZANCHC 109 (7 November 2025).
[2] *Ibid.*

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(*b*) the decision sought on appeal does not fall within the ambit of section 16(2)(*a*); and

(*c*) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties."

[4] It is apparent from the foregoing that section 17(1)(*a*) of the Act prescribes the threshold for leave to appeal. It provides two alternative bases upon which leave may be granted, namely where the court is satisfied either that "the appeal would have a reasonable prospect of success" or that "there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration". The use of the disjunctive "or" makes it clear that these requirements are alternative and not cumulative. Accordingly, an applicant need not establish both grounds. It suffices if either is present, although reliance may be placed on both where appropriate.[3] In the present matter, the applicants rely on both reasonable prospects of success and in the alternative, the existence of some other compelling reason why the appeal should be heard.

[5] Where the applicant demonstrates either that the appeal would have a reasonable prospect of success or that there is a compelling reason for the appeal to be heard, leave to appeal should be granted. Section 17(1)(*b*) and (*c*) constitutes contingent jurisdictional requirements, which are triggered only where the nature of the decision sought to be appealed so requires. Section 17(1)(*b*) operates in conjunction with section 16(2)(*a*), which permits the dismissal of an appeal where the decision sought would have no practical effect or result. Section 17(1)(*c*), in turn, applies only where the decision sought to be appealed does not dispose of all the issues in the case, thereby requiring consideration of whether an appeal would lead to a just and prompt resolution of the real issues

[3] *Smartpurse Solutions (Pty) Ltd (applicant for leave) v FirstRand Bank, In re: FirstRand Bank Ltd v Smart purse Solutions (Pty) Ltd* [2025] 1 All SA 552 (GJ) para 7.

between the parties. In *Smartpurse Solutions (Pty) Ltd (applicant for leave) v FirstRand Bank, In re: FirstRand Bank Ltd v Smart purse Solutions (Pty) Ltd*[4], the court, having found that the applicant had based its application for leave solely on the contention that the envisaged appeal had reasonable prospects of success, held as follows:

"If the applicant demonstrates that the appeal would have a reasonable prospect of success (and the requirements in section 17(1)(b) and (c) are also met), the court must grant the leave that is sought. The exercise of the power to grant leave is then not in the court's discretion."[5] (*Footnote omitted*)

[6] In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*[6]*,* the applicant for leave to appeal advanced the grounds that the contemplated appeal enjoyed reasonable prospects of success and that other compelling reasons existed for it to be heard. The application was thus premised on both section 17(1)(*a*)(i) and (ii) of the Act. The Supreme Court of Appeal ("SCA") made the following instructive observations:

"In order to be granted leave to appeal in terms of s 17(1)*(a)*(i) and s 17(1)*(a)*(ii) of the Superior Courts Act an applicant for leave must satisfy the court that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. If the court is unpersuaded of the prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. A compelling reason includes an important question of law or a discrete issue of public importance that will have an effect on future disputes. But here too, the merits remain vitally important and are often decisive. Caratco must satisfy this court that it has met this threshold."

[4] [2025] 1 All SA 552 (GJ), para 11.
[5] *See also* para 9.
[6] 2020 (5) SA 35 (SCA) para 2.

[7] In *Ramakatsa and Others v African National Congress and Another*[7], the SCA further made the following insightful observations:

> "Turning the focus to the relevant provisions of the Superior Courts Act (the SC Act), leave to appeal may only be granted where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or there are compelling reasons which exist why the appeal should be heard such as the interests of justice. This Court in *Caratco,* concerning the provisions of s 17(1)*(a)*(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive'. I am mindful of the decisions at high court level debating whether the use of the word 'would' as opposed to 'could' possibly means that the threshold for granting the appeal has been raised. If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist."

[8] It appears from the foregoing that an applicant for leave to appeal must satisfy this Court that the envisaged appeal enjoys a reasonable prospect of success or that there exists some other compelling reason why the appeal should be heard. In order to succeed, the applicant must show on proper grounds that the prospects of success are realistic and not remote. Something more than a mere possibility of success, or that the case is arguable on appeal, or that it is not

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[7] (724/2019) [2021] ZASCA 31 (31 March 2021); [2021] JOL 49993 (SCA) para 10; See also *S v Smith* 2012 (1) SACR 567 (SCA) para 7.

hopeless, is required. There must, in other words, be a sound and rational basis for concluding that reasonable prospects of success exist. Alternatively, an applicant may succeed by demonstrating compelling reasons why the appeal should be heard in the interests of justice. Such compelling reasons may include an important question of law or a discrete issue of public importance with implications for future disputes.[8]

[9] It is considered necessary at this juncture, prior to outlining the grounds of appeal advanced by the applicants, to recapitulate the effect and essence of the impugned order. The effect of the impugned order is that of a restitutionary interdict. It directs First National Bank ("the third respondent in the main application") to forthwith transfer the amount stipulated therein from the account held in its books in the name of Zecha Holdings (Pty) Ltd to the account of Zecha JV Rosstech Xerox (Pty) Ltd ("Zecha JV") held with Standard Bank. The monies concerned were those of Zecha JV.

[10] Several grounds have been raised to support the application for leave to appeal. These grounds, when considered, go beyond the limited issues the parties on their own agreed were the only issues to be determined by the Court. Furthermore, some of the grounds relate to new matters which were neither raised nor argued in the main application. In *Mokweni and Others v Plaatjies and Others*[9], the court observed:

> "Undoubtedly, raising an entirely new issue for the first time on appeal is something to be frowned on. This is because, it is well settled that appellate courts do not decide any issue that was not raised in the court a quo. The upshot of this is that a party cannot raise an issue on appeal that was not raised in the court a quo unless it is a pure question of law. Hence, a party must seek leave of the appellate court to introduce a new issue on appeal."

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[8] *S v Smith* 2012 (1) SACR 567 (SCA) para 7.
[9] [2023] JOL 61490 (WCC) para 17.

[11] In *Barkhuizen v Napier*[10], the Constitutional Court made the following apposite observations:

> "The mere fact that a point of law is raised for the first time on appeal is not in itself sufficient reason for refusing to consider it. If the point is covered by the pleadings, and if its consideration on appeal involves no unfairness to the other party against whom it is directed, this Court may in the exercise of its discretion consider the point. Unfairness may arise where, for example, a party would not have agreed on material facts, or on only those facts stated in the agreed statement of facts had the party been aware that there were other legal issues involved. It would similarly be unfair to the other party if the law point and all its ramifications were not canvassed and investigated at trial."

[12] In *Supaluck Investments (Pty) Ltd v Valuations Appeals Board: City of Johannesburg and Another (Leave to Appeal)*[11], the Court pertinently stated:

> "In paragraph 7 of its notice of appeal, the Applicant contends that there are other compelling grounds to entertain the appeal in that the matter involves the interpretation of sections 51, 52, 73 and 75 of the Rates Act and that the matter raises novel points of law, which have not previously been decided and which are of significant importance to the public and finally that it is in the interest of justice that the leave be granted. I disagree. This matter does not raise any novel points of law.
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> *It seems to me that the interpretation issue was raised for the first time on appeal. This ground I will not entertain in the absence of the reasons why the court should deal with the new issue on appeal*." (Emphasis added)

[13] It has also been observed that one of the enduring tenets of judicial adjudication is that courts are enjoined to decide only the issues placed before them by the

[10] 2007 (5) SA 323 (CC) para 39.
[11] [2024] JOL 64643 (GJ) paras 16-17.

litigants.[12] That principle was aptly explained in *Fischer and Another v Ramahlele and Others*[13] in the following terms:

> "Turning then to the nature of civil litigation in our adversarial system, it is for the parties, either in the pleadings or affidavits (which serve the function of both pleadings and evidence), to set out and define the nature of their dispute, and it is for the court to adjudicate upon those issues. That is so even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution, for '(i)t is impermissible for a party to rely on a constitutional complaint that was not pleaded'. There are cases where the parties may expand those issues by the way in which they conduct the proceedings. There may also be instances where the court may mero motu raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the proviso that no prejudice will be caused to any party by its being decided. Beyond that it is for the parties to identify the dispute and for the court to determine that dispute and that dispute alone."

[14] It bears emphasis that the parties before this Court agreed that the issues that the Court had to determine were threefold, namely:

14.1 whether Japhta, as the sole director of Zecha JV, had, as a matter of fact, on 16 April 2025, the authority to transact on account number 3[...] held at Standard Bank;

14.2 whether Japhta is the holder of 51% of the issued share capital in Zecha JV and

14.3 what an appropriate order would be in relation to costs.[14]

[15] In his address at the hearing of the application for leave to appeal, Mr Mongala, appearing on behalf of the applicants, submitted that there are, in essence, two fundamental issues that form the foundational basis of this application. The first

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[12] *MEC, Department of Education, Eastern Cape v Komani School & Office Suppliers* CC 2022 (3) SA 361 (SCA) para 53.
[13] 2014 (4) SA 614 (SCA) para 13; see also *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) para 15.
[14] *Zecha JV Rosstech Xerox (Pty) Ltd and Others v Zecha Holdings (Pty) Ltd and Others* (990/2025) [2025] ZANCHC 109 (7 November 2025) para 27.

issue is the right of the applicants in the impugned judgment (being the first to fourth respondents *in casu*) to launch the application that ultimately resulted in the impugned order. This submission is premised on the contention that this Court erred in accepting that Mr Sephiri Mosala held 51% of the shareholding in Zecha JV, and that Mr Charles Rossouw held the remaining 49% therein. He contended that the Court erred in holding that Mr Mosala remained the holder of the 51% shareholding in Zecha JV, relying on Annexures AR2 and AR3, which purported to be share certificates issued on behalf of the first respondent.

[16] The second central issue, according to Mr Mongala, concerns whether Japhta had the requisite authority to transact on the account of Zecha JV. The contention in this regard is that this Court erred or materially misdirected itself in concluding that Japhta lacked authority to transact on the current account, on the basis that it misinterpreted annexure MJ13, which Japhta contended constituted a mandate to the bank authorising her to exercise signing powers on the bank account from which she transacted on 16 April 2025. I deal with the two central issues in turn.

[17] The validity of the share certificates is challenged on the basis that they do not comply with section 51(1)(*b*) of the Companies Act 71 of 2008 in that each certificate was signed by only one person instead of two. The validity of the share certificates reflecting that the shareholding of the first respondent consisted of 51% and 49% for Mr Mosala and Mr Rossouw, respectively, is an issue that was never raised in the main application. In opposition, the applicants had presented their case on the basis that the certificates were valid. Their only contention was that those certificates were later overtaken by subsequent events in that Mr Mosala later sold his 51% shareholding to Ms Japhta for a R100-00 consideration or purchase price. To this effect, they relied on a disputed Share Sale Agreement purportedly concluded between Ms Japhta and Mr Mosala. It is a fact that from the inception and registration of Zecha JV, Mr Mosala and Rossouw held 51% and 49% shareholding, respectively.

[18] It is interesting to note that in the alleged "Share Sale Agreement", it is acknowledged that the seller, who is Mr Mosala, "is the registered and beneficial owner of 51% ordinary shares in Zecha JV Rosstech Xerox in terms of the Companies Act of 2008 as amended". Ms Japhta's averment in the Answering Affidavit is that she is the one who entered into the aforesaid agreement and that she signed it. She cannot now claim that Mr Mosala was not a 51% shareholder in Zecha JV.

[19] In dealing with this aspect, the impugned judgment at paragraphs 29, 30 and 31 reads:

> "Japhta relies on the Share Sale Agreement for her contention that at the time when she made the monetary transfers, she was the majority shareholder of Zecha JV, having purchased Mosala's 51% interest. Mosala disputes that he concluded the alleged Share Sale Agreement. He disputes his signature on the document and submits that if it is indeed his signature, it must have been taken from a separate contract and added to the alleged Share Sale Agreement.
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> The court is then faced with diametrically opposed versions of the parties. On the face of it, what appears to be Mosala's signature and those of witnesses to the document (the alleged Share Sale Agreement) is in the document. In the disputed Share Sale Agreement, Ernest Mosala is reflected as the 'Seller' and Japhta is reflected as the 'Buyer'. The significance and relevance of the document in this application is considered hereunder.
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> It is common cause that the Share Certificate of Zecha JV dated 11 February 2022 (annexure AR2) reflects that Mosala is the owner of 51% Ordinary Shares. Similarly, the Share Certificate issued to C Rossouw, also dated 11 February 2022, reflects the latter as the owner of 49% of the Ordinary Shares in Zecha JV. These appear to be the only Share Certificates issued by Zecha JV. There is no other official document produced to show that Japhta had become a shareholder of Zecha JV. The only official document produced indicates that she was registered as a Director of Zecha JV. In the absence of

any official document, it must be accepted that, for all intents and purposes, Japhta had not been a shareholder of Zecha JV. Zecha JV has legal personality, and the only proof of its shareholders is reflected in the documents provided by Zecha itself, and the records held by the entity responsible for the registration of companies, the CIPC. If indeed there was any valid Share Sale Agreement between Mosala and Japhta, the official records of Zecha JV were never changed to reflect the purported changes. On this aspect alone, it must be found that Mosala was a 51% shareholder of Zecha JV and not Japhta."

[20] There was no evidence presented or submissions made to challenge the validity of the shareholding certificates. It is opportunistic to now contend that the Court erred in accepting the undisputed version of the respondents. The decision that Mr Mosala was a shareholder was not solely based on the share certificate. The factual position, as well as the records of the Companies and Intellectual Property Commission (CIPC), also evidenced that Mr Mosala was a 51% shareholder of Zecha JV.

[21] On the second issue regarding whether Ms Japhta held the authority to transact on the banking account of Zecha JV, the impugned judgment deals with this aspect from paragraphs 34 to 38 as follows:

"The mandate given to Standard Bank on who had the authority to make transactions on the account on behalf of Zecha JV is contained in annexure AR4 to the replying affidavit. The aforementioned annexure is an application to open a current account for Zecha JV submitted on 12 May 2022. The related persons in the application are C Rossouw and Mosala. The instruction is that the two are to sign jointly for the validity of the transactions on the account. It is notable that this application (to open a Business Account) is preceded by the alleged Share Sale Agreement between Japhta and Mosala. However, in the aforesaid application made on 12 May 2022, Japhta's particulars do not appear.

Annexure MJ13 is a document that Japhta contends is a mandate to the bank to afford her signing authority in the aforementioned bank account from which she transacted on

16 April 2025. The objective facts found on this document, however, support the applicants' version. The document is dated 29 January 2024, and was submitted to open a 'Moneymarket Call Account-Investment' as an additional account for Zecha JV. Notably, Fouché is included together with Japhta as signatories to this additional account. The latter is also reflected as the director of Zecha JV. Both Japhta and Fouché have appended their signatures to the document. Furthermore, just like as reflected in Annexure AR4, which relates to the current account of Zecha JV, both Mosala and C Rossouw are reflected as shareholders. Notably, at the time when the additional 'Moneymarket Call Account – Investment' was opened in the name of Zecha JV, the shareholding and respective percentage interests of Mosala and C. Rossouw in Zecha JV, as reflected on Annexure MJ13, remained unchanged from what appears on Annexure AR4. The mandate to the bank is for Japhta and Mosala to sign jointly for the transactions on this additional account.

The inescapable conclusion is that, when Japhta transferred the money from account number 3[...], she did not have the necessary signing powers on the account. For her to acquire such powers, she needed the mandated signatories to authorise the Bank to allow her to be able to access and transact on the account. She also required the authority of the signatories, namely, C Rossouw and Mosala, for her to remove Fouché as a signatory to the transactions on the account.

There is a further reason why Japhta could not legally transfer money from the account as she did. Section 75(3) of the Companies Act provides that:
'If a person is the only director of a company, but does not hold all of the beneficial interests of all of the issued securities of the company, that person may not-

(a) approve or enter into any agreement in which the person or a related person has a personal financial interest; or

(b) as a director, determine any other matter in which the person or a related person has a personal financial interest,

unless the agreement or determination is approved by an ordinary resolution of the shareholders after the director has disclosed the nature and extent of that interest to the shareholders.'

It is common cause that she has a familial relationship with Monchusie, which makes the latter a 'related person' for purposes of section 75(3). Similarly, the purported Acknowledgement of Debt and Settlement Agreement Japhta submits the R4 000 000 payment was made with regards to, would be an 'agreement' for purposes of section 75(3). Japhta did not obtain the consent of the shareholders to conclude an Acknowledgement of Debt and Settlement Agreement with Monchusie. Therefore, her actions contravened the provisions of section 75(3) of the Companies Act."

[22] The other grounds of appeal relate to the removal of Ms Japhta as a director of Zecha JV. At paragraph 33 of the impugned judgment, it is made clear that the legality of the removal of Ms Japhta as a director of Zecha JV has no bearing on these proceedings. The removal of Ms Japhta occurred by a resolution taken at a meeting held on 17 April 2025 and the application is based on the activities of Ms Japhta on 16 April 2025, when her directorship of Zecha JV was not an issue. Her activities related to the transfer of monies when she was not an authorised signatory to the relevant bank account of Zecha JV and furthermore in contravention of section 75(3) of the Companies Act. At the time, Messrs Mosala and Rossouw remained the only registered shareholders of Zecha JV. All the grounds of appeal relating to this aspect are therefore not relevant. The legality of her removal as a director of Zecha JV is an issue to be decided in appropriate proceedings should she so wish.

[23] It is not necessary to burden this judgment with analysing the rest of the grounds of appeal. They relate to evidential matters that have been fully discussed in the impugned judgment. Some of the so-called grounds of appeal are new matters which are being raised for the first time in this application. This appears to have been an attempt to introduce the issues that served in the application before Mamosebo J which the parties had agreed beforehand that they should not be part of the issues for determination in this matter.

[24] Ultimately, it is trite that an appeal lies against the order and not the reasons for the order.[15] This Court is not persuaded that the envisaged appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard. Accordingly, the application for leave to appeal to the Full Court of this Division, alternatively the Supreme Court of Appeal, falls to be dismissed. There should be no order as to costs since the respondents did not participate in these proceedings.

[25] In the result, the following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.

LP TLALETSI
JUDGE PRESIDENT
NORTHERN CAPE DIVISION

Appearances

For the Applicants:	Adv. J.K Mongala
Instructed by:	Justin Pillay & Associates, Kimberley

[15] See *Department of Transport and Others v Tasima (Pty) Limited; Tasima (Pty) Limited and Others v Road Traffic Management Corporation and Others* [2018] ZACC 21 (CC); 2018 (9) BCLR 1067 (CC) para 80; see also *International Trade Administration Commission v SCAW South Africa (Pty) Ltd and Others* [2010] ZACC 6 (CC); 2010 (5) BCLR 457 (CC); 2012 (4) SA 618 (CC) para 71.